S.B. CIVIL WRIT PETITION NO.4822/2005.

Bhanwarlal Prajapat Vs. Union of India & Anr.

Date of Order :: 10th September 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sanjeet Purohit, for the petitioner.

By way of this petition for writ, the petitioner seeks the reliefs of quashing of the communication dated 20.08.2004 (Annexure-5) whereby the Central Government has refused to refer the alleged dispute for adjudication; and directions against the respondent No.2 for referring the dispute to the appropriate Labour Court for adjudication.

From the factual matrix presented in this case, it appears that the petitioner worked at Koliya (District Nagaur) Branch of the State Bank of Bikaner and Jaipur as “Lathi-man” (class-IV employee) for 80 days from 22.08.1978 to 09.11.1978; and then, the petitioner raised the so-called dispute somewhere in the year 2003 by making an application to the Conciliation Officer (Central), Jaipur (undated application placed on record as Annexure-1). The Bank concerned in response to the communication dated 05.12.2003 of the Assistant Labour Commissioner (Central) stated in its reply dated 10.01.2004 (Annexure-2) that the petitioner was placed on work for a fixed term for the regular staff being on leave and he worked for 80 days only; that

according to the instructions of the Government of India, once a chance was given to all the temporary employees for employment in the Bank services in the year 1990 by advertisement in the newspapers but the petitioner did not avail of the opportunity; and that the dispute was raised after 25 years without any justification. The petitioner stated in his rejoinder dated 11.03.2004 (Annexure-3) that his services were illegally terminated after 80 days; and that he sent an application to the Bank for re-employment and despite repeated requests, his prayer was not considered.

The Conciliation Officer in his report dated 24.05.2004 (Annexure-4) stated to the Government the stand of the management that the claimant worked only for 80 days as a substitute against the vacant post for the regular staff being on leave and he was never appointed as regular employee or casual worker or daily rated worker. The Government by its impugned order dated 20.08.2004 (Annexure-5) has refused to refer the dispute for adjudication stating that,-

> "the applicant was engaged against leave vacancy for a specified period. Moreover, the dispute has been raised belatedly after a gap of more than 25 years without any justifiable reasons for the delay. Hence, no merit".

The petitioner filed this writ petition on 25.07.2005 and this Court issued show cause notice on 16.08.2005 while noticing the contention on behalf of the petitioner thus:

> “Learned counsel for the petitioner submits that there is a catena of judgments of this Court as well as Hon'ble Supreme Court wherein it has been held that appropriate Government has no jurisdiction to refuse to refer the dispute on merits. On submission of the failure report the appropriate Govt. is required to refer the dispute. In the present case the appropriate Govt. has adjudicated the dispute on merits, while holding that petitioner was engaged against leave vacancy.
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> In view of the above submissions, issue show cause notices to the respondents."

The respondents, i.e., the Union of India and the Desk Officer, Ministry of Labour, Government of India have been served. However, the petitioner has chosen not to implead the employer concerned as a party-respondent in this writ petition.

Arguing for the petitioner, learned counsel Mr. Sanjeet Purohit has strenuously contended that the Government has been clearly in error in refusing the reference while observing that the petitioner was appointed against leave vacancy. Such observations, according to the learned counsel, relate to the merit of the case on the nature of employment and could not have been made the basis of refusal, as the Government has no jurisdiction to adjudicate on merits. Learned counsel further submitted that Government has failed to consider the basic dispute raised by the petitioner about violation of Section 25H of the Industrial Disputes Act, 1947 ('the Act'); and that merely for delay, reference could not have been refused.

Learned counsel has referred to and relied upon the decision of this Court in Ram Bharos Kharwad Vs. State of Rajasthan & Anr. : 2006 (1) WLC 317 and that of the Hon'ble Supreme Court in the case of S.M. Nilajkar & Ors. Vs. Telecom District Manager, Karnataka : (2003) 4 SCC 27.

Having given a thoughtful consideration to the submissions made by the learned counsel for the petitioner and having examined the material placed on record, this Court is clearly of opinion that no case for issuance of any writ, order or direction is made out.

While referring to the previous decisions including the one in S.M. Nilajkar's case (supra), the Hon'ble Supreme Court in the case of Assistant Engineer, C.A.D., Kota Vs. Dhan Kunwar : AIR 2006 SC 2670 has been pleased to observe:

> "6. It may be noted that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.
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> 7. However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) it was noted at paragraph 6 as follows:
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> > "6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since heel settled. Power is to be exercised

> reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."

8. In S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27) the position was reiterated as follows (at para 17) :

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in M/s. Shalimar Works Ltd. v. Their Workmen (AIR 1959 SC 1217) (supra), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be

raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the dispute should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of the most of the old workmen was held to be fatal in M/s. Shalimar Works Limited v. Their Workmen (AIR 1959 SC 1217) (supra). In Nedungadi Bank Ltd. v. K.P. Madhavankutty and others AIR 2000 SC 839 (supra), a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandar Sammanta and others v. Union of India and others (1993 AIR SCW 2214(supra), it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Employees under P&T Department v. Union of India (AIR 1987 SC 2342) (supra), the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they

> were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."
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> 9. In the background of what has been stated above, the Labour court should not have granted relief. Unfortunately, learned single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons.
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> 10. Above being the position, the appeal is bound to succeed and we direct accordingly. No costs."
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> **(underlining supplied)**

Thus, the decision of the Hon'ble Division Bench of this Court in Ram Bharos Kharwad and that of the Hon'ble Supreme Court in S.M. Nilajkar as relied upon by the learned counsel for the petitioner are required to be read with reference to the latest pronouncement of the Hon'ble Supreme Court in Dhan Kunwar's case (supra); and, with the authoritative pronouncement of the Hon'ble Supreme Court, it is clear that there is no formula of universal application in relation to the delay in raising of the dispute and it depends on the facts of each individual case.

However, the proposition suggested by learned counsel for the petitioner that whatever be the delay, the Government

is bound to refer the matter for adjudication, does not appear correct. While rejecting such similar contention in S.B. Civil Writ Petition No.2185/2005: Mahaveer Singh Vs. The General Manager, Paschimi Rajasthan Dugdh Uptpadak Sahakari Sangh Ltd. & Ors., decided by a separate order today, this Court has said,-

> "The gist and essence of the matter stands summarized in the law declared by the Hon'ble Supreme Court in latest pronouncements in the cases of Dhan Kunwar and Sham Lal (supra) that no formula of universal application could be laid down in relation to the delay in seeking reference; and it would depend upon facts of each individual case. The submission made by the learned counsel for the petitioner that irrespective of delay and irrespective of everything, the Government is bound to refer every case for adjudication, thus, remains untenable.
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> The suggestion as made on behalf of the petitioner that the Government is bound to refer whenever a failure report is submitted and has no jurisdiction to refuse the reference does not appear to be the correct proposition of law; and stands contrary to the first part of Section 12(5) of the Act whereby the Government refers the case to the Board, Labour Court or Tribunal on being satisfied after considering the report made by the Conciliation Officer that there is a case for such reference. The proposition suggested on behalf of the petitioner, in effect would reduce the Government as a mere courier agency taking the dispute from the desk of Conciliation Officer to the Labour Court; and shall render otiose the later part of Section 12(5) of the Act whereby the Government may not make reference after recording and communicating its reasons therefor. The authority of the Government to examine if there exists a dispute *in presenti* or in apprehension cannot be denied. It is true that the legislature has not provided any time limit for raising of the dispute and making of reference but

> thereby it cannot be adopted as an abstract proposition that the dispute is available to be raised whenever the workman would choose to do so. Such proposition does not stand in conformity with the requirements of the statute and with the law declared by the Hon'ble Supreme Court as noticed above."

This Court is clearly of opinion that even when the legislature in its wisdom has not provided any time limit for making reference; such liberty could only be construed as being meant for relief in cases of bona fide disputes and not as if providing a licence to every person to walk in at any time with any proposition with reference to some remote engagement with the employer once upon a time.

On the facts of this case, it is noticed that the dispute has been raised after 25 years of the alleged termination after 80 days of engagement without any reasonable cause behind such inordinate delay. It has been suggested during the course of arguments that the petitioner essentially contended violation of Section 25H of the Act for not considering his candidature for re-appointment. From the averments taken in the application (Annexure-1), it appears that according to the petitioner he made the application for re-employment in the year 1987. Even thereafter, the so-called dispute was raised 16 years later, only in the year 2003. On the facts and in the circumstances of this case, the Government cannot be faulted in not making reference for adjudication of such a stale claim.

The submission that the Government has proceeded to adjudicate on merits is not correct. The Government has only referred to the fact that "the applicant was engaged against a leave vacancy for a specified period". This appears only to be a statement of fact inasmuch as the petitioner has alleged himself a daily rated worker but has not denied that he worked for 80 days; and the Bank concerned has clarified the nature of employment of the petitioner being against leave vacancy. The Government could not have ignored the facts available on record; and such facts coupled with gross and inordinate delay without a whisper on the cause of delay have obviously led the Government to come to the conclusion that there was no dispute fit for adjudication.

Having regard to the facts and to the circumstances of the present case, this Court is not persuaded to exercise extraordinary jurisdiction to compel the Government to make the reference. The petitioner has not even impleaded the alleged employer a party-respondent in this writ petition.

There appears no cause or justification to issue any writ, order, or direction in this matter.

The petition fails and is, therefore, dismissed.

(DINESH MAHESHWARI), J.

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